

Who writes the law for the Land of Israel? Supreme Court case asks

An Orthodox family excommunicated by a religious court fights back with help from a Reform rabbi, in a battle over freedom of — or from — religion

BY AMANDA BORSCHEL-DAN | July 27, 2015, 3:20 pm |

The high holidays were approaching three years ago when her upstairs neighbors in the ultra-Orthodox city of Elad informed “C” that they intended to build an extended balcony before Sukkot, the festival of tabernacles.

Realizing that this balcony would make her family’s patio not kosher for use for their own sukka (which must be constructed under the open sky), C refused to sign the neighbors’ building permit application. There were religious and economic considerations at play: In addition to the commandment of dwelling in a tabernacle, for ultra-Orthodox Jews, a sukka patio/balcony is an extremely desirable feature in property resale.

The neighbors belittled C, since she and her husband have only daughters who are not obligated in the commandment of sukka dwelling and decided to proceed without a permit. On the eve of Rosh Hashana, unauthorized construction began.

Elad, located some 25 kilometers east of Tel Aviv on the seam with the West Bank near the city of Shoham, is an Orthodox, and increasingly ultra-Orthodox city, that was planned and built in the late 1990s to provide housing for the ever-growing Haredi population. Since previous mayor Yitzhak Idan was arrested on corruption charges in 2013, Elad has been led by Mayor Yisrael Porush from the Ashkenazi United Torah Judaism party.

As is the practice in her ultra-Orthodox community in Elad, C consulted with her rabbi, who advised her to turn to civil law enforcement to halt the construction. The police were summoned twice, but the neighbors refused to answer the door. Eventually C hired a lawyer and went to the civil courts to obtain a work stoppage order.

At the same time, C’s neighbors turned to an Elad religious court, “Ha’yoshar v’hatzedek”

(Honesty and Justice) to arbitrate the disagreement. C was served with a writ from the Elad rabbinical court telling her that if she does not cancel her injunction from the secular court and turn the matter over to the religious court, she and her family will be served with a writ of refusal — excommunication.

C did not bow to this overt intimidation tactic of excommunication and on the evening of Yom Kippur, a writ of refusal was posted throughout the city. Alongside the copy tacked to her door, they also posted a “subtle” message in the form of a photocopied article from an ultra-Orthodox paper that depicted the sudden death of a religious man who had also been excommunicated.

And so, on Erev Yom Kippur, the holiest day in the Jewish calendar, C and her family had no synagogue in which to pray. Her daughters were subsequently shunned at a school which would not register them — until the intervention of the minister of education.

Unable to afford to move and with nowhere to go, C is continuing to fight, and on Thursday saw her case discussed before the Supreme Court under the helm of a Reform rabbi. After a series of complaints and civil court hearings, C joined forces with [Hiddush](#), an organization founded to fight for religious freedom and equality by rabbi and lawyer Uri Regev.

Clash of civilizations

This unlikely collaboration — a Reform rabbi handling the case of an ultra-Orthodox family — is exactly what Hiddush is about, said Regev in his Jerusalem office last week ahead of a Supreme Court hearing about the Elad case.

Founded seven years ago, Hiddush, said Regev, brings to light the core clash of religion and state in Israel, which he calls an ill-defined Jewish democratic state.

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“We are 67 years into the life of the state and it is still fighting over the ABCs of what does it mean to have a Jewish democratic state,” he said, launching into a passionate intro to the battle for religious pluralism — complete with a booming rote recitation of Israel’s Declaration of Independence.

Although derived from a “private” rabbinical court, the excommunication notice in the Elad case was written on official stationery, giving the address of the Elad chief rabbi, a public civil servant, as headquarters. And although an Ashkenazic court, Ha’yoshar v’hatzedek was seemingly operating with the blessing of the city’s chief Sephardic rabbi, Mordechai Malka, who is called the “*nasif*” or head of the court on its website.

“Can the State of Israel tolerate a reality in which a significant population is strong-arming people

into denying the right to turn to the court of law?" Regev asked, referring to the Elad case.

Arbitration in a religious court, he continued, needs assent from both sides to be considered binding. There is no situation in which a property claim can be adjudicated in a rabbinical court without both sides' willingness, and therefore no way in which the court can threaten excommunication unless given jurisdiction.

There are several reasons why this case could be precedent-setting, said Regev in a follow-up phone call on Sunday. Although there have already been a number of cases in which ultra-Orthodox Jews have been served a writ of refusal, this is the first time in which an individual's right to civil justice was blocked through intimidation and excommunication.

What is more interesting, said Regev, is that this is the first case in which both sides agree that at its core, the key issue is freedom of religion.

Hiddush's position is that there should be a clear prohibition for anyone connected to the state rabbinate to sanction excommunications. This also seems to be the position of the state: In response to a pre-Supreme Court query, the attorney general said this intimidation through excommunication "is criminal, illegal, and undermines the rule of law," said Regev.

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But the opposition states it should be a rabbinical court's right to issue these writs of refusals.

"This is the first case in which that clash is the crux of the legal case," said Regev. "Beyond the individual case and hardships, what makes this case of symbolic, precedent value [is that the opposition is] saying we oppose the attorney general's instructions," believing that religious law supersedes, he claimed.

The case is on hold for another four months during which time the attorney general's office is tasked with further investigating the Elad chief rabbinate, and subsequently deciding whether to sanction the city's top three rabbis, a step which insiders claim may "spark a religious war."

Alternatively, the Supreme Court may be forced to rule on the case, which, for Hiddush, may well be the preferred result. From statements Thursday, there is already indication that the Supreme Court justices view with repugnance the idea of excommunication as a means of forcing a circumvention of civil courts.

"The writs of refusal are intended to rule out an individual's right to exercise his civil liberties," said Justice Menni Mazuz.

“It is impossible to minimize the horrible effect of a writ of refusal. If a rabbinic court says to excommunicate an individual who turns to a civil court of law, this is terrible. The writ of refusal is a terrible thing,” added Justice Uri Shoham.

Who writes the law of the Land of Israel?

The case is one of hundreds in which religious and civil courts conflict on who has the authority to legislate the law of the Land of Israel: the Shulhan Aruch code of Jewish law or civil legislation.

For the past several years, Hiddush has been on the forefront of raising awareness in the Diaspora for the need for civil marriage in Israel. Regev said he spends about a third of his time in the United States speaking to Jewish communities and reaching out to its leadership to adopt a resolution in support of freedom of marriage.

He said he is met with overwhelming support for civil marriage, even from the most staunchly uncritical pro-Israel organizations. Hiddush developed a mini-website that depicts the human rights nature of civil marriage with its [Freedom of Marriage World Map](#), which looks at the status of 160 countries.

Further tactics include frequent polling of Israeli opinion on subjects such as the rabbinate’s monopoly on life cycle events, and the ultra-Orthodox parties’ demands on entering the coalition.

The many other issues on the docket include burial rights for the 350,000 Israelis who entered the country from former Soviet Union nations via the Law of Return, but are not considered Jews by Orthodox Jewish law, and the use of intimidation by kashrut supervisors against hotels and banquet halls. But there are many many more.

Regev said he is an optimist by nature and that overall, things have gotten better in terms of religious freedom in Israel. There is more transparency in the government and the media is a real partner in raising awareness.

However, since Israelis tend to vote on security, not human rights concerns, the country still needs a Knesset that is willing to push the religious status quo envelope. Regev feels that with enough public pressure, even the most cynical politician will create change.

“The people are ready for a change, they just don’t know what to do,” said Regev. But for this idealistic lonely lawyer of faith, “it starts and ends with people fighting for the Declaration of Independence.”